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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

LYNDON H. LAROUCHE, JR. and VAN HALL,
Petitioners,

vs.

GENTRY CROWELL, Secretary of State for the State of Tennessee,
Respondent.

On Writ of Certiorari to the Supreme Court of Tennessee

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a state court proceeding, challenging both the arbitrary denial of a qualified candidate's right to inclusion on a presidential primary ballot and, thus, the right of his supporters to vote for the candidate of their choice, can properly be denied as "moot" because of the lower court's conclusion that the issues in controversy do not involve matters of great public importance, and are incapable of repetition yet evading review.

2. Whether, in a proceeding challenging both the arbitrary denial of a qualified candidate's right to inclusion on a presidential primary ballot and, thus, the right of his supporters to vote for the candidate of their choice, state courts can capriciously prohibit discovery and the development of an evidentiary record until the passage of the election and then dismiss the action as "moot".

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On Writ of Certiorari to the Supreme Court of Tennessee

PETITION FOR A WRIT OF CERTIORARI

The petitioners, Lyndon H. LaRouche, Jr. and Van Hall respectfully pray that a Writ of Certiorari issue to review the order of the Supreme Court of Tennessee entered on September 23, 1985.

OPINIONS BELOW

The order of the Supreme Court of Tennessee (reprinted in the Appendix at A-1) is unreported. The opinion of the Tennessee Court of Appeals (reprinted in the Appendix at A-2) entered on July 11, 1985 is unpublished. The order of the Chancery Court for Davidson County, Tennessee dismissing this proceeding as moot (reprinted in the Appendix at A-7) entered on July 11, 1985 is unpublished as well.

JURISDICTION

The order of the Supreme Court for Tennessee was entered on September 23, 1985. This Court's jurisdiction is invoked pursuant to 28 *United States Code* Section 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Article III to the United States Constitution provides in part that:

> The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; — to all cases affecting ambassadors, other public ministers and consuls; — to all cases of admiralty and maritime jurisdiction; — to controversies to which the United States shall be a party; — to controversies between two or more states; — between a state and citizens of another state; — between citizens of different states; — between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

The First Amendment to the United States Constitution provides that:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The Fifth Amendment to the United States Constitution provides in part that:

> No person shall . . . be deprived of life, liberty, or property, without due process of law.

The Fourteenth Amendment to the United States Constitution provides in part that:

> No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case concerns the dismissal as moot of an action pending in the courts of Tennessee challenging the constitutionality of a statute invoked to deny a candidate a place on the presidential primary ballot[1] and to deny his supporters the right to vote for the candidate of their choice.[2] On March 2, 1984, a campaign worker for Lyndon H. LaRouche, Jr. contacted the Tennessee Secretary of State's office to ensure that Mr. LaRouche's name would appear on the presidential preference primary ballot as a Democratic party candidate. The primary was to occur on May 1, 1984.

The LaRouche campaign worker was informed that there were alternative means provided for placing candidates on the ballot. First, a candidate would be placed on the ballot upon the secretary of state's determining that the candidate was "generally advocated or recognized as [a candidate] in the national news media throughout the United States."[3] Second, a candidate would be placed on the ballot upon the filing of a

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[1] *See* notes 3 and 4, *infra*, at p.

[2] The petitioner Van Hall was the named party below representing the contingent of Tennessee residents supporting LaRouche's access to the ballot.

[3] *Tenn. Code Ann.* Section 2-5-205 and Section 2-13-304 are reprinted fully in Supplemental Appendix A and B.

petition "signed by at least twenty-five hundred (2,500) registered voters of the party whose nomination is sought."[4]

During the March 2, 1984 telephone call to the Secretary of State's office, the campaign worker advised the person with whom he spoke of LaRouche's prior placement on ballots in Tennessee. Secretary of State Crowell had placed Lyndon H. LaRouche, Jr. on the Tennessee presidential primary ballot in 1976 and 1980.[5] On both occasions, LaRouche was placed on the ballot under the standard, "generally advocated or recognized as [a candidate] in the national news media." The campaign worker further stated that filing a petition was not possible, given that the deadline for the petition was four days away.

Despite LaRouche's inclusion on the ballots in 1976 and 1980, and despite the submission of numerous newspaper articles, excerpts from publications and other materials indicating that in 1984 LaRouche was "generally advocated or recognized as a candidate in the national news media throughout the United States," Mr. LaRouche was denied access to the ballot.

Following this action, the LaRouche campaign made immediate efforts to seek review of the Secretary of State's actions. After some delay, caused by difficulties in obtaining counsel, LaRouche and Hall initiated an action in state court.

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[4] *Tenn. Code Ann.* Section 2-5-205(2) is reprinted fully in Supplemental Appendix A.

[5] In 1976 he was placed on the ballot as the Labor Party's candidate for President of the United States. In 1980, LaRouche was placed on the ballot as the Democratic Party's contender for President of the United States.

A. State Trial Court Proceedings

On March 27, 1984, LaRouche and Hall filed a complaint in the Chancery Court for Davidson County, Tennessee. The complaint alleged in part that *Tenn. Code Ann.* Section 2-13-304(a), as amended, and Section 2-5-205 were unconstitutionally vague on their face in violation of the First and Fourteenth Amendments to the Constitution. Also, it was alleged that the statutes were unconstitutional as applied to LaRouche on First, Fifth and Fourteenth Amendment grounds. The complaint sought injunctive and declaratory relief.

On March 27, the Chancery Court held a hearing on LaRouche and Hall's motion for a temporary restraining order and temporary injunction.[6] Also on March 27, LaRouche and Hall moved for expedited discovery of the Secretary of State pursuant to Rule 30.02, Tennessee Rules of Civil Procedure. It was contended that unless discovery went forward, there was no way to develop an adequate record for consideration of the merits prior to the occurrence of the presidential preference primary. The motions were denied.

On March 28, 1984, counsel for the State moved to dismiss. The trial court treated the motion as a motion for summary judgment, which it denied on March 28, 1984. On May 7, 1984, counsel for LaRouche and Hall served notice on Secretary of State Crowell to appear for a deposition upon oral examination. The deposition was to occur on May 15, 1984. Additionally, a notice of deposition and subpoena *duces tecum* were issued re-

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[6] Rule 65.03, Tennessee Rules of Civil Procedure specifies the conditions upon which a temporary restraining order may be issued. Rule 65.04 provides for the conditions upon which a "temporary" rather than a "preliminary" injunction may be issued. These Rules of Civil Procedure, in large part, mirror their counterparts under the Federal Rules of Civil Procedure.

questing the appearance of the Secretary of State's designee for a deposition and the production of documents relating to the decision not to place Lyndon LaRouche on the ballot. On May 11, 1985, counsel for the State moved for a protective order and to quash the subpoena; this motion was argued on May 25, 1984.

On June 13, 1984, the trial court filed a memorandum opinion quashing the subpoenas. In its opinion, the court also stated that petitioner could pursue discovery of Secretary of State Crowell only through interrogatories, requests for production and requests for admissions. The court did not enter an order on this until July 12, 1984. The court so held even though it acknowledged that the Secretary of State's action regarding LaRouche was not documented by any administrative record and that the Secretary had not acted in this connection in a quasi-judicial capacity in disqualifying LaRouche.

Following the entry of the court's memorandum opinion on June 13, 1984, counsel for Mr. LaRouche issued a notice of deposition and a subpoena for the Secretary of State's designee, the chairman of the Tennessee Democratic Party and the Executive Director of the Tennessee Democratic Party. The depositions were to be taken on June 26, 1984 and July 6, 1984.

Although counsel for the State did not represent the two Democratic Party officials, he nonetheless moved for protective orders as to their depositions. The State also asserted that the deposition of the Secretary's designee could not be taken under the terms of the memorandum opinion entered on June 13, 1984. On July 6, 1984, the parties argued the State's motion for protective orders. The trial court denied the motions, but stayed all discovery until September 1, 1984.

At or about the time the stay of discovery was to be lifted, counsel for the State renewed the motion to dismiss or for summary judgment. At this point, because of the stay of discovery,

the record contained little information other than that which appeared on March 28, 1984.[7]

The only evidence before the court relating to the decision not to place LaRouche on the ballot were two affidavits prepared by the Secretary of State. These two affidavits detailed the Secretary's duties relating to elections in Tennessee and set forth that the Secretary found materials submitted by LaRouche lacking in numerous unspecified respects. The affidavits also enumerated documents the Secretary would be willing to produce if required to do so.

Following argument upon the renewed motion to dismiss or for summary judgment, the trial court took the matter under advisement. On September 18, 1984, an order was entered dismissing this action as moot.

B. Initial Proceedings — Supreme Court of Tennessee

On April 3, 1984, the trial court granted LaRouche's motion for an interlocutory appeal to the Supreme Court of Tennessee on the denial of the motion for a temporary injunction. Counsel for LaRouche requested expedited consideration of the interlocutory appeal since the presidential preference primary was to occur on May 1, 1984. On April 19, 1984, the Supreme Court of Tennessee entered an order declining review.

C. Proceedings — Court of Appeals of Tennessee and Supreme Court of Tennessee

On July 11, 1985, the Court of Appeals of Tennessee affirmed the decision of the trial court, holding that the case was moot

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[7] Shortly after the discovery stay expired, counsel for LaRouche and Hall filed with the court and served on counsel for Crowell interrogatories directed to the Secretary of State. Additional discovery requests were filed and served at this point. However, as a result of the court's dismissal, responses were never made.

since it did not involve a matter of "great public interest." Further, the court held that the issues presented in these proceedings were not capable of repetition, yet evading review. The Supreme Court of Tennessee declined review on September 23, 1985.

D. Proceedings — United States District Court for the Middle District of Tennessee

On April 19, 1984, counsel for LaRouche and Hall filed a proceeding in the United States District Court for the Middle District of Tennessee generally paralleling the action in the state courts. This action was filed due to the seeming delay in consideration of the issues presented to the Supreme Court of Tennessee on an interlocutory basis. Additionally, it was alleged in the district court proceedings that the May 1, 1984 primary election was quickly approaching and that the fundamental constitutional issues were being contravened without adequate judicial review.

On April 23, 1984, the district court entered an order abstaining in part from the consideration of the issues raised pending a final determination by the state courts and in part dismissing the application for preliminary relief. On November 1, 1985, the district court dismissed without prejudice the remainder of this action in accordance with local rules of the court.

REASONS FOR GRANTING THE WRIT

I.

In A Proceeding In Which Issues Were Raised Regarding Rights Of Ballot Access And Rights To Vote, The State Court's Dismissal As Moot Starkly Conflicts With This Court's Decisions Interpreting Mootness Principles In Similar Cases

Article III of the United States Constitution requires "the existence of a case or controversy" before the federal judiciary can assert jurisdiction in a given case. *Liner v. Jafco, Inc.*, 375 U.S. 301, 306 n. 3 (1964); *see also Powell v. McCormack*, 395 U.S. 486, 496 n. 7 (1969); *Sibron v. New York*, 392 U.S. 40, 50 n. 8 (1968). A case that is "moot" by definition is not a "case or controversy" within the meaning of Article III, since a decision in this context " 'cannot affect the rights of litigants' " before the Court. *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974), *quoting North Carolina v. Rice*, 404 U.S. 244, 246 (1971). Even in a case that arises in the state courts, as here, " 'the question of mootness is a federal one which a federal court must resolve before it assumes jurisdiction.' " *DeFunis*, 416 U.S. at 316, *quoting North Carolina v. Rice*, 404 U.S. at 246.[8]

This Court has addressed the question of mootness frequently in voting rights cases. *Mandel v. Bradley*, 432 U.S. 173, 175 n. 1 (1976); *Fishman v. Schaffer*, 429 U.S. 1325, 1329 n. 4 (1976); *American Party of Texas v. White*, 415 U.S. 767, 770 n. 1 (1974); *Storer v. Brown*, 415 U.S. 724, 737 n. 8 (1974); *Rosario*

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[8] Under Tennessee law, a case or controversy is not held to be moot when interests of a "public character and of importance in the administration of justice generally are involved." *McCanless v. Klein*, 182 Tenn. 631, 188 S.W.2d 745 (1945). In *McCanless v. Klein, supra*, the Tennessee Supreme Court adopted this Court's test for mootness set out in *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498 (1911).

v. Rockefeller, 410 U.S. 752, 756 n. 5 (1973); *Dunn v. Blumstein,* 405 U.S. 330, 333 n. 2 (1972); *Moore v. Ogilvie,* 394 U.S. 814, 816 (1969); *Cf. Hall v. Beals,* 396 U.S. 45, 48 (1969) (action affirmed as moot in right-to-vote case in which state statute had been amended prior to final disposition of proceeding).

The underlying constitutional issues at stake in this case — the right to vote and the right to ballot access — as in the cases noted above are central to our democratic form of government.[9] "Indeed the right to vote is a 'fundamental political right, because preservative of all rights,' " *Storer v. Brown,* 415 U.S. 724, 756 (1974) (Brennan, J., dissenting), *quoting Yick Wo v. Hopkins,* 118 U.S. 356, 370 (1886), and " '[o]ther rights, even the most basic, are illusory if the right to vote is undermined.' " *Storer v. Brown,* 415 U.S. at 756 (Brennan, J., dissenting), *quoting Wesberry v. Sanders,* 376 U.S. 1, 17 (1964); *see also Reynolds v. Sims,* 377 U.S. 533, 555 (1964).[10]

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[9] In *Bullock v. Carter,* 405 U.S. 134, 142-43 (1971) a case in which the constitutionality of a Texas statute requiring candidates to pay a "filing fee" in order to obtain ballot access was challenged, this Court stated:

> The initial and direct impact of filing fees is felt by aspirants for office, rather than voters; and the Court has not heretofore attached such fundamental status to candidacy as to invoke a rigorous standard of review. However, the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical correlative effect on voters.

[10] As noted in Justice Brennan's dissent in *Storer v. Brown,* 415 U.S. 724, 756 (1974), "the right to vote derives from the right of association that is at the core of the First Amendment, protected from state infringement by the Fourteenth Amendment." *Id.,* citing *NAACP v. Button,* 371 U.S. 415, 430 (1963); *Bates v. Little Rock,* 361 U.S. 516, 522-523 (1960); *NAACP v. Alabama,* 357 U.S. 449, 460-461 (1958).

On the importance of the right of ballot access, this Court stated in *Anderson v. Celebrezze,* 460 U.S. 780, 787 (1982), *quoting Williams v. Rhodes,* 393 U.S. 23, 30-31 (1968):

> "In the present situation the state laws place burdens on two different, although overlapping, kinds of rights — the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms."
>
> As we have repeatedly recognized, voters can assert their preferences only through candidates or parties or both. "It is to be expected that a voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues." *Lubin v. Panish,* 415 U.S. 709, 716 (1974).

In light of the foregoing, a state court's dismissal as moot of an action relating to ballot access and the right to vote particularly in the context of a national electoral primary must be closely scrutinized.

Obviously the May 1, 1984 Tennessee presidential preference primary is long since past. The statutes that LaRouche and Hall challenged as unnecessarily burdening the electoral process remain unamended and will control future presidential preference primaries held in Tennessee.

This Court has held consistently that when, as here, election questions are at stake, the case is not moot even though an election is long over and no effective relief can be provided to a candidate or voters with respect to the past election. *See e.g., Storer v. Brown,* 415 U.S. 724, 737 n. 8 (1974); *American Party of Texas v. White,* 415 U.S. 767, 770 n. 1 (1974); *Dunn v. Blumstein,* 405 U.S. 330, 333 n. 2 (1972). Such holdings are based on the recognition that even though the election is long

past, the effects of statutes that are alleged to unnecessarily burden the electoral process will persist as the statutes are applied.

This principle is equally applicable to the present case, in which both the right of ballot access and the right to vote are involved. Mr. LaRouche, who alleged that he will be a future presidential primary candidate in Tennessee and other similarly situated candidates will experience these persistent effects. *See Storer v. Brown,* 415 U.S. at 737 n. 8; *Dunn v. Blumstein,* 405 U.S. at 333 n. 2. Further, there will be a continuing correlative effect upon Hall and other similarly situated voters. *Bullock v. Carter,* 405 U.S. 134, 142-43 (1971). This controversy involving the constitutionality of *Tenn. Code Ann.* Section 2-5-205(1) and Section 2-13-304(a) is, therefore, "capable of repetition, yet evading review." *Southern Pacific Terminal Co. v. ICC,* 219 U.S. 498, 515 (1911).

The capable of repetition doctrine is applicable not only to the facial attacks by LaRouche and Hall to the two Tennessee statutes, but is applicable to the "as applied" challenge as well. *See Storer v. Brown,* 415 U.S. 724, 737 n. 8 (1974).

From a policy standpoint, it is extremely important that there be judicial review of *Tenn. Code Ann.* Section 2-5-205(1) and 2-13-304(a) not only on a facial basis but as applied in this instance. "The construction of these statute[s], and understanding of [their] operation, and possible constitutional limits on [their] application, will have the effect of simplifying future challenges to these statutes, thus increasing the likelihood that [future cases] can be adjudicated before an election is held." *Storer v. Brown,* 415 U.S. at 737.

II.

In A Proceeding In Which Issues Were Raised Regarding Rights Of Ballot Access And Rights To Vote, The State Court's Dismissal As Moot On A Record Devoid Of Evidentiary Support Is Contrary To Decisions Of This Court

This proceeding was commenced on March 27, 1984. The Tennessee presidential preference primary occurred on May 1, 1984. On March 27, 1984, counsel for LaRouche and Hall asked for expedited discovery. This request was denied.

On May 7, 1984, counsel for LaRouche and Hall attempted to begin discovery. Motions to quash and for a protective order were filed. These motions were sustained in a memorandum opinion entered on June 13, 1984 by the trial court.

The court's opinion stated that petitioner could pursue discovery of Secretary of State Crowell only through interrogatories, requests for production of documents, and requests for admissions. The trial court apparently relied on *United States v. Morgan,* 313 U.S. 409 (1941) as the basis of its ruling.

However, the trial court acknowledged when this decision was made that the Secretary of State's actions regarding LaRouche were not documented by any administrative record and that the Secretary had not acted in a quasi-judicial capacity in disqualifying LaRouche. The only evidentiary matter before the court relative to the Secretay of State's actions in disqualifying LaRouche, which he admittedly performed himself and not through a designee, was an affidavit prepared by the Secretary.

In *Citizens to Preserve Overton Park, Inc. v. Volpe,* 401 U.S. 402 (1971) this Court held under almost identical factual circumstances that the lower court's reliance on the litigation affidavits was inappropriate since those documents were merely "post hoc" justifications. *Citizens to Preserve Overton Park, Inc., supra,* at 419.

This Court remanded the case to the district court, ordering it to review the full administrative record. The limitations of *Morgan, supra* were acknowledged and under the factual circumstances in *Citizens to Preserve Overton Park, Inc.* this Court held that even in the absence of a showing of bad faith the taking of testimony by oral deposition might be appropriate:

> [When] there are no...formal [administrative] findings and it may be that the only way there can be effective judicial review is by examining the decision makers themselves.

Id. at 420.

In any case, on July 6, 1984 all discovery was stayed until September 1, 1984. On September 18, 1984 the trial court dismissed this action as moot noting that the primary election had already occurred and that the Court could no longer fashion an effective remedy for LaRouche and Hall.

The Court of Appeals of Tennessee held that the denial of ballot access to LaRouche was not a matter of significant public concern, but rather it was merely a matter of "individual concern". Under the circumstances of the record, there was no evidentiary basis for the Court of Appeals to make such an assertion and accordingly no finding of mootness can be predicated upon such an assertion.

Such a holding is tantamount to a finding that LaRouche's candidacy was "frivolous or fraudulent" with no evidentiary basis to support it. *See Jenness v. Fortson,* 403 U.S. 431, 442 (1971). This action by the state courts abdicates the judiciary's appropriate role and offends fundamental notions of due process.

CONCLUSION

The rights of ballot access and to vote are perhaps our most fundamental political rights, since they are "preservative of all

rights." *Yick Wo v. Hopkins,* 118 U.S. 356, 370 (1886). Given the cavalier fashion in which such fundamental constitutional rights have been dealt with by the state courts, the writ must be granted to preserve the integrity of the electoral process for voters and prospective candidates.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing petition has been mailed on the 20th day of December, 1985, to the following counsel:

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Assistant Att[illegible]ey General
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Robert L. DeLaney

APPENDIX

APPENDIX A

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Lyndon H. LaRouche, Jr., and
Van Hall,
Plaintiffs-Appellants,

vs.

Gentry Crowell, Secretary of
State of Tennessee,
Defendant-Appellee.

ORDER

(Filed Sept. 23, 1985)

Upon consideration of the application for permission to appeal and the entire record in this cause, the Court is of the opinion that the application should be and the same hereby is denied at the cost of appellants.

PER CURIAM

APPENDIX B

TENNESSEE COURT OF APPEALS

No. 85-345-II
Davidson Equity

Lyndon H. LaRouche, Jr., et al
Plaintiff-Appellant

vs.

Gentry Crowell, etc.
Defendant-Appellee

OPINION

The issue in this case is whether the appellant's action to require the Tennessee Secretary of State to place his name on the ballot for the 1984 Democratic Presidential Preference Primary became moot after the primary and was properly dismissed by the Trial Court.

State law provides for a Presidential Preference Primary to be held the first Tuesday in May in presidential election year Tenn.Code Ann. §2-5-205(1) (1979). Candidates may obtain a place on the ballot by two avenues. First, by the action of the Secretary of State if he, in his sole discretion, determines that a candidate is advocated or recognized in the national news media throughout the United States. Or, alternatively, by a petition signed by 2,500 registered voters of the party whose nomination is sought. Tenn.Code Ann. §2-5-205(2) (1979).

In March of 1984, the Secretary of State refused the appellant's request to be placed on the ballot for the Democratic Presidential Preference Primary pursuant to T.C.A. §2-5-205(1). The appellant did not attempt to get on the ballot by petition; instead, he brought this action on March 27, 1984, seeking a declaration that his name should be placed on the ballot and a mandatory injunction directing the Sectretary of

State to place his name thereon. The complaint alleges that the appellant met the criteria for inclusion on the ballot pursuant to T.C.A. §2-5-205(1) and that the statute as applied resulted in a violation of his constitutional rights. The Chancellor denied the request for immediate relief and the election passed. On September 18, 1984, the Chancellor dismissed the action holding that the question had become moot.

On appeal, the appellant takes issue with that determination.

Using terms like "mootness", "justiciability", and "actual case or controversy" rather indiscriminately and interchangeably, courts have drawn the line on deciding hypothetical, academic or abstract questions. Even under a statute making the equitable action for a declaratory judgment available to courts in general, T.C.A. §§29-14-101-113 (1980), there must still be a showing of a " 'substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant a declaratory judgment.' " *Evans v. Dwyer,* 358 U.S. 202, 204 (1959) (quoting *Maryland Casualty Co. v. Pacific Coal & Oil Co.,* 312 U.S. 270, 273 (1941)).

If, because of the passage of time a case has lost its character as a present, live controversy, or the questions involved have been deprived of their practical significance, the courts have refused to decide them because they are then "moot" or "academic." *See Perry v. Banks,* 521 S.W.2d 549, 550 (Tenn. 1975).

We think that is the posture of the present case. As the Chancellor succintly stated in the final decree:

> Other than seeking a taxation of costs to the defendant and seeking general relief, the plaintiffs' complaint filed on March 27, 1984 seeks three types of relief: (1) A temporary restraining order prohibiting printing of the ballots; (2) an injunction ordering the Secretary of State to place

> LaRouche on the ballot; and (3) a judgment declaring LaRouche "to be a proper candidate to appear on the Tennessee Presidential Primary Election ballot." The only claim conceivably still remaining is the last one - a declaration that LaRouche is a proper candidate to appear on the ballot.
>
> The 1984 primary election has already been conducted and all questions relating to that election are moot. Whether LaRouche will attempt to be placed on the ballot in 1988 and, indeed, whether there will even be a presidential preference primary in Tennessee in 1988, are matters of pure conjecture and speculation, not appropriate for declaratory judgment.

Thus, unless there is an exception to the "mootness bar," this case should be dismissed.

Our courts have recognized two exceptions in cases where the questions are otherwise moot. The first occurs in a case which involves a matter of "great public interest." *Walker v. Dunn,* 498 S.W.2d 102 (Tenn. 1972). In *New Riviera Arts Theatre v. State,* 219 Tenn., 652, 412 S.W.2d 890 (1967), the rule is defined in the following terms:

> While the rule that this Court will not decide a moot question is applicable when the question for determination affects only rights and claims personal to the parties, an exception is well recognized when interest of a public character and of importance in the administration of justice generally are involved. *McCanless v. Klein,* 182 Tenn. 631, 188 S.W.2d 745 (1945). Because the question involves a determination of public rights or interests under the conditions which may be repeated in the future, we will consider the question.

219 Tenn. at 658, 412 S.W.2d at 893.

We think the present case is one primarily involving personal rights rather than rights of great public concern. It is true that the right to vote is one of the most valuable rights secured by our constitution, but this case is about the rights of Mr. LaRouche, an individual. It does not affect a large segment of the voting public. Therefore, we do not think this case fits within the first exception.

The second exception involves a case where the action invading a right is capable of repetition yet will evade review if not addressed by the courts. *See State ex rel. Anglin v. Mitchel,* 596 S.W.2d 779, 782 (Tenn.1980); *Perry v. Banks,* 521 S.W.2d 549 (Tenn. 1975). The federal courts applied this exception to numerous cases involving ballot access and the right to vote. *See American Party of Texas v. White,* 415 U.S. 767 (1974); *Rosario v. Rockerfeller,* 410 U.S. 752 (1973); *Kay v. Austin,* 621 F.2d 809 (6th Cir. 1980). The object sought by affording review in a case otherwise moot, is a clarification of the law that will settle some dispute that is likely to arise in the future. Thus, a decision that voters should have been allowed to vote in last year's election is a determination that they are eligible to vote in future elections, absent some change of circumstances. A decision that a candidate met certain legal requirements, such as age or residency, or that a law keeping a candidate off the ballot is unconstitutional, settles those questions for future elections.

The same is not true with respect to Mr. LaRouche in the present case. A decision that he was a candidate advocated or recognized in the national news media throughout the United States in 1984, and should have been placed on the ballot, settles nothing on those same questions in 1988. He may spend the next three years in obscurity and approach 1988 with little or no recognition as a serious candidate.

We think the present case is governed by the decision of our Supreme Court in *Perry v. Banks,* 521 S.W.2d 549 (Tenn. 1975). There, the question was whether one had to be a lawyer

to serve as County Judge of Knox County. When the balloting resulted in the election of a lawyer over two non-lawyers, the Supreme Court decided that the question had become moot and dismissed the appeal. If that case was not saved by the "capable of repetition yet evading review" doctrine when non-lawyers are likely to stand for election for county judges in the future, we think it ineluctably follows that this one should be dismissed.

There are other questions raised by the appellant regarding the failure of the Trial Judge to require the Secretary of State to submit to discovery. We think these questions are now moot (we apologize for the use of this term) in view of our decision that the Chancellor was correct in dismissing the case.

The judgment of the court below is affirmed and the cause is remanded to the Chancery Court of Davidson County for any further proceedings necessary. Tax the costs on appeal to the appellant.

/s/ Ben H. Cantrell, Judge

CONCUR:

/s/ Henry F. Todd, P.J., M.S.

/s/ Samuel L. Lewis, J.

APPENDIX C

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART THREE

No. 84-810-III

Lyndon H. LaRouche, Jr.
and Van Hall

vs.

Gentry Crowell, Secretary
of State of Tennessee

JUDGMENT

This case involves an attempt to place the plaintiff Lyndon H. LaRouche, Jr. on the ballot in the Tennessee Presidential Preference Primary held on May 1, 1984. The plaintiffs failed in that effort and the defendant, Secretary of State, has moved to dismiss the suit. The motion should be granted.

Other than seeking a taxation of costs to the defendant and seeking general relief, the plaintiffs' complaint filed on March 27, 1984 seeks three types of relief: (1) a temporary restraining order prohibiting printing of the ballots; (2) an injunction ordering the Secretary of State to place LaRouche on the ballot; and, (3) a judgment declaring LaRouche "to be a proper candidate to appear on the Tennessee Presidential Preference Primary election ballot." The only claim conceivably still remaining is the last one — a declaration that LaRouche is a proper candidate to appear on the ballot.

The 1984 Primary Election has already been conducted and all questions relating to that election are moot. Whether LaRouche will attempt to be placed on the ballot in 1988 and, indeed, whether there will even be a Presidential Preference

Primary in Tennessee in 1988, are matters of pure conjecture and speculation, not appropriate for declaratory judgment.

Accordingly, the plaintiffs' complaint is dismissed at their costs.

/s/ Robert S. Brandt
Chancellor

September 18, 1984

cc: Robert DeLaney
William J. Haynes, Jr.

SUPPLEMENTAL APPENDIX A

Tenn. Code Ann. §2-5-205

2-5-205. Presidential preference primary — Printing of names on ballot — Withdrawal of name. — The names of candidates for president of the United States shall be printed on the ballot for the presidential preference primary only if they are:

(1) The names of persons who the secretary of state in his sole discretion has determined are generally advocated or recognized as candidates in national news media throughout the United States. The secretary of state shall submit the names to the state election commission no later than the first Tuesday in March of the year when an election is to be held. If a candidate who has been certified by the secretary of state wishes to be a candidate in the presidential preference primary of a party other than that for which the secretary of state certified him, he shall signify his preference to the state election commission before twelve (12:00) noon, prevailing time, on the fourth Tuesday in March, and his name shall be certified only for the ballot of his chosen party.

(2) The names of persons for whom nominating petitions, signed by at least twenty-five hundred (2,500) registered voters of the party whose nomination is sought and by the candidate, are filed not later than twelve (12:00) noon prevailing time on the first Tuesday in March of the year when an election is to be held. The nominating petitions shall be filed with the state election commission and certified duplicates with the coordinator of elections and with the chairperson of the candidate's party's state executive committee. No candidate may enter the presidential primary of more than one statewide political party.

The secretary of state shall advise each of the prospective candidates by the most expeditious means available that, unless he withdraws his name by twelve (12:00) noon, prevailing time, on the fourth Tuesday in March, his name will appear on the ballot of his party in the presidential preference primary. If such a

person executes and files with the state election commission an affidavit stating without qualification that he is not and does not intend to become a candidate for president in the forthcoming presidential election, his name shall not be on the ballot.

The secretary of state shall certify to the county election commissions on the fourth Friday in March the names which this section requires to be on the ballot for each political party.

SUPPLEMENTAL APPENDIX B

Tenn. Code Ann. §2-13-304

2-13-304. Placement of presidential candidates on preference primary ballot. — (a) On the first Tuesday in March, the secretary of state shall notify all nationally recognized candidates for president that their names are to be placed on the Tennessee presidential preference primary ballot. Such notice shall also be given at the same time to all of the statewide political parties.

(b) Any person, who is notified that his name is to be placed on such ballot and who does not desire his name to appear on such ballot, shall execute and file with the secretary of state an affidavit stating without qualification that he is not and does not intend to become a candidate for president in the forthcoming presidential election. Such person shall file such affidavit with the secretary of state prior to twelve (12:00) noon prevailing time on the third Friday in March.

(c) On the first Tuesday in April, after twelve (12:00) noon prevailing time, the secretary of state shall announce the candidates for president who shall appear on the ballot and shall issue a call for an election for the purpose of electing delegates to the national conventions of all statewide political parties.